

REMARKS

This is in response to the non-final Official Action currently outstanding with respect to the above-identified application.

Claims 1-9 were present in this application as of the time of the issuance of the currently outstanding Official Action. By the foregoing Amendment, Claims 1-9 have been amended. New Claim 10 has been added, and no claims have been cancelled. No new matter has been added to this application by virtue of the amendment of any of the claims. Accordingly, upon the entry of the foregoing Amendment, Claims 1-10 as hereinabove amended will constitute the claims under active prosecution in this application.

A version of the claims as they will stand upon the entry of this amendment is set forth above as required by the Rules.

More specifically, it is noted that in the currently outstanding Official Action, the Examiner has:

1. Acknowledged Applicant's claim for foreign priority under 35 USC 119 (a) – (d) or (f), and confirmed that the required copy of the priority documents have been received by the United States Patent and Trademark Office;
2. Provided Applicant with a Notice of References cited and copies of each of the cited references;

3. Acknowledged Applicant's Information disclosure Statements of 20 December 2001 and 6 February 2003 by providing Applicant with copies of the Forms PTO 1449 that accompanied those Information Disclosure Statements duly signed, dated and initialed by the Examiner to confirm his consideration of the references listed therein;
4. Failed to advise Applicants concerning whether or not the drawings filed with this application are acceptable. **Applicants respectfully request that the Examiner provide an indication concerning the acceptability of the drawings currently on file in response to this communication.**
5. Rejected Claims 1, 2, 5, 6 and 9 under 35 USC 102(b) as being anticipated by the Ikeda, et al reference (US 6,067,284);
6. Objected to Claims 3, 4, 7 and 8 as being dependent upon rejected base claims, but indicated that those claims would be allowable if rewritten in independent for including all of the limitations of the respective base claims and any intervening claims.

Further comment concerning items 1 - 4 is not deemed to be necessary in these Remarks.

With respect to item 5 above, the Examiner has taken the position that the Ikeda et al reference constitutes a complete anticipation of Claims 1, 2, 5, 6 and 9 of the present application. The basis of the Examiner's position rests upon his construction of the present claim limitation directed to "a change in a factor causing fluctuation in effective power" as reading on a change in temperature as detected by the temperature sensor 36 in the Ikeda, et al reference.

Applicant respectfully notes that the claims of an application are to be read in light of their associated specification. By this it is not meant that limitations contained in the specification can be incorporated into the claims by reference, but rather that the meaning of the limitation actually present in the specification is to be determined in light of the definitions thereof found in the specification. Applicant respectfully submits that in the present specification it is clearly indicated that “a factor causing a fluctuation in effective power” as defined for the purposes of the present disclosure does not include environmental factors such as temperature or the like. Instead, the factors contributing to fluctuation in effective power defined in the present specification include objective lens shift, tilt, servo residual error and the like (wherein the objective lens shift is deemed to be the most significant). See, the present specification at Page 4, first full paragraph, and Page 28, first full paragraph.

Accordingly, Applicant respectfully submits that as originally presented the claims of this application were not anticipated by the Ikeda, et al reference because the wording thereof cannot be appropriately construed as covering temperature as a “factor causing fluctuation in effective power” as contemplated in the specification.

Nevertheless, in order to expedite this prosecution, Applicant has now amended Claims 1 and 9 in a manner that is respectfully submitted to render the Examiner’s currently outstanding rejection under 35 USC 102(b) moot.

In particular, Applicant now has particularly indicated in Claims 1 and 9 that the optical disk apparatus irradiates an optical disk with a laser under conditions wherein the optical disk apparatus and the optical disk are maintained at substantially the same temperature. Further, in new Claim 10, Applicant now has particularly defined the factors causing fluctuation in effective power as being "an objective lens shift focusing said laser to the active layer of the optical disk, or a tilt, or a servo residual error".

Applicant respectfully submits that under no possible construction of the Ikeda et al reference can it justifiably be said that Ikeda et al either anticipates or renders obvious the claims of the present invention as hereinabove amended. The is because the Ikeda et al reference not only fails to teach or disclose the present invention as now claimed, but also fails to suggest the present invention to a person of ordinary skill in the art. Specifically, it is to be understood that the Ikeda reference is directed to compensation of optimum laser power fluctuations due to temperature changes. The present invention, on the other hand, is directed to compensation of effective laser power fluctuations based on mechanical, rather than environmental, factors. These factors are specified in the present specification as objective lens shift, tilt, and servo residual error and the like.

Thus, by the foregoing Amendment, Applicant has clarified Claims 1 and 9 in a manner that specifically indicates that the present invention is not directed to temperature fluctuations, and in new independent Claim 10 has been specifically listed the mechanical factors causing fluctuation in effective laser power discussed in the present specification as being the factors compensated by the present invention. The remainder of the foregoing amendment simply brings the wording of the dependent claims into conformity with Claim 1 from which they each directly or indirectly depend.

In summary, Applicant respectfully submits that all of the claims that will be present in this application after the entry of the foregoing Amendment are in condition for allowance. Consequently, Applicant respectfully requests that the rejections set forth in the currently outstanding Official Action be withdrawn in view of the foregoing Amendment, and that a decision allowing this application as hereinabove amended be issued in response to this communication.

Finally, Applicants believe that additional fees are not required in connection with the consideration of this response to the currently outstanding Official Action. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge and/or credit Deposit Account No. **04-1105**, as necessary, for the correct payment of all fees which may be due in connection with the filing and consideration of this communication.

Respectfully submitted,

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